

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORNEALIUS LOPES,

Plaintiff,

No. C 07-6213 PJH

v.

ORDER TO SHOW CAUSE

FREMONT FREEWHEELERS, et al.,

Defendants.

TO PLAINTIFF CORNEALIUS LOPES:

YOU ARE HEREBY ORDERED TO SHOW CAUSE IN WRITING no later than May 16, 2008, why the claims asserted against defendants Fremont Freewheelers; K&K Insurance; USA Cycling; Northern California and Nevada Cycling Association (NCNCA); Robert Parker; Lawrence Upthegrove; Lloyd Rath; Richard Brockie; Gary Birch; Sally Wilson; Jason Sage; Tim O'Hara; Jeff Wrong; Byron Sheppard; Steve Grusis; Larry Rosa; Linda Buffetti; Joe Baughman; Peter Allen; FFBC Race Team; Alameda County District Attorney; Casey Carrington; Deputy D.A. Shara Mesic; Deputy D.A. Lisa Faria; and Deputy D.A. Petagrew should not be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute

Plaintiff filed the above-entitled action on November 2, 2007, in the Superior Court of California, County of Alameda. On November 8, 2007, he filed a first amended complaint, naming 30 defendants. On December 5, 2007, plaintiff filed a "proof of service" with the Superior Court stating that copies of the summons and complaint had been mailed to all 30 defendants, along with a written notice and form acknowledgment of receipt, pursuant to California Code of Civil Procedure § 415.30. Under § 415.30, service of the summons and

1 complaint may be effected by mail, if the person to be served returns a signed
2 acknowledgment of receipt.

3 On December 7, 2007, defendant CB Richard Ellis removed the action to this court,
4 alleging federal question jurisdiction, and asserting that it believed it was the only defendant
5 served as of that date. On December 13, 2007, CB Richard Ellis filed a motion to dismiss.
6 The motion was granted on March 10, 2008, and judgment was entered thereafter in favor
7 of CB Richard Ellis.

8 To date, plaintiff has filed no return of service of the summons and complaint on any
9 defendant. Apart from CB Richard Ellis, only defendants Larry Nolan, Newark Police
10 Department, Jim Davis, and Officer Joseph Dale Wren have made an appearance.

11 Under Federal Rule of Civil Procedure 4(m), plaintiff was required serve defendants
12 with the summons and complaint no later than 120 days after the date the complaint was
13 filed. Because the case was removed before most defendants had been served, the court
14 counts the 120 days starting from December 7, 2008, the date of removal. Thus, plaintiff
15 was required to serve all defendants no later than April 6, 2008.

16 No later than May 16, 2008, plaintiff either must file a proof of service of the
17 summons and complaint on the 25 defendants that have not made an appearance, or must
18 provide a statement explaining why the court should not dismiss those defendants from the
19 case.

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21 **IT IS SO ORDERED.**

22 Dated: May 2, 2008



23 PHYLLIS J. HAMILTON
24 United States District Judge
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